IN THE HIGH COURT OF BOMBAY AT GOA

FRIST APPEAL NO. 49 OF 1997.

1. Mr. Prakash Balkrishna Naik
   Prataprao Sardessai, and

2. Mrs. Jyoti Prakash Naik
   Prataprao Sardessai,
   both residents of
   Cortalim, Goa. ... Appellants/
   Defendants.

VERSUS

1. Mr. Surendra Balkrishna Naik
   Prataprao Sardessai; and

2. Mrs. Pushpa Surendra Naik
   Prataprao Sardessai,
   both residents of Margao. ... Respondents/
   Plaintiffs.

Shri S.D. Lotlikar, Senior Advocate with Ms. S. Dessai, Advocate for the Appellants.

Mrs. A.A. Agni with Mrs. N. Narvekar, Advocates for the Respondents.

CORAM: N.A. BRITTO, J.

DATE: 22ND MARCH, 2004.

ORAL JUDGMENT:

This appeal was filed against the preliminary judgment/Decree dated 10.12.1996 of the learned Civil Judge Senior Division, Vasco-da-Gama in Special Civil Suit No.45/84. At the hearing of the arguments, learned Senior Counsel Shri Lotlikar restricted his arguments only to Plot No.51 having an area of 532 sq.m. which plot in terms of clause (b) of the Judgment/Decree has been ordered to be sold in public auction. The learned Senior Counsel Shri Lotlikar

submitted that the ground floor of the house in the said plot is occupied by the defendants and all that the plaintiffs were interested were in their share in the said plot, the ground floor of the house and the well existing in the said plot.

2. Learned Advocate Shri Lotlikar then submitted that in terms of the Partition Act, 1893 the defendants were entitled to buy the share of the plaintiffs at the valuation made by the Commissioner appointed by the Court since the valuation already done by the Commissioner after the preliminary decree was not acceptable to the defendants.

3. Section 2 of the Partition Act, 1893 deals with the power of the court to order sale instead of division in partition suits. Sub-section (1) of Section 3 of the said Partition Act provides that if, in any case in which the court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf. Learned Senior Counsel

Shri Lotlikar requested that his request be considered as an application under Section 3 of the Partition Act.

4. Learned Advocate Smt. Agni on behalf of the plaintiffs, has submitted that they are agreeable for the appointment of the Commissioner.

5. Accordingly, it is hereby directed that the Trial Court shall appoint a Commissioner for the purpose of Section 3 of the Partition Act, 1893 to value the share of the Plaintiffs in plot No.51 admeasuring 532 sq.metres, the ground floor of the house existing therein and the well and offer the same for sale to the defendants at a price ascertained by him. The parties are hereby directed to appear before the Trial Court on 5.4.2004. The Trial Court is required to direct the Commissioner to submit his report within a period of three months and thereafter dispose of the suit as expeditiously as possible, considering the same was filed 20 years back. The preliminary judgment/decree shall stand modified to the extent indicated hereinabove. Appeal shall accordingly be disposed of.

N.A. BRITTO, J.

sl.